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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 FEDERAL HOUSING FINANCE AGENCY,)

9 Petitioner,)

10 vs.)

11 SATICOY BAY, LLC,)

12 Respondent.)
13

Case No. 2:17-cv-00913-JCM-GWF

**REPORT AND
RECOMMENDATION**

14 This matter is before the Court on the Petitioner Federal Housing Finance Agency's ("FHFA")
15 Cross-Motion for an Order Requiring Respondent to Comply with the Subpoena (ECF No. 18), filed
16 on June 14, 2017. The Respondent Saticoy Bay, LLC filed an Opposition (ECF No. 24) on July 3,
17 2017 and the Petitioner filed a Reply (ECF No. 26) on July 10, 2017. Also before the Court is the
18 Respondent's Motion to Quash (ECF No. 19), filed on June 15, 2017. The Petitioner filed an
19 Opposition (ECF No. 17) on June 14, 2017 and the Respondent filed a Reply (ECF No. 24) on July 3,
20 2017. The Court conducted a hearing in this matter on July 21, 2017. *See* (ECF No. 27).

21 **BACKGROUND AND DISCUSSION**

22 In determining whether to enforce an administrative subpoena, a court shall inquire into "(1)
23 whether Congress has granted the authority to investigate; (2) whether procedural requirements have
24 been followed; and (3) whether the evidence is relevant and material to the investigation." *F.D.I.C. v.*
25 *Garner*, 126 F.3d 1138, 1142 (9th Cir. 1997) (citing *EEOC v. Children's Hosp. Med. Ctr. of N. Cal.*,
26 719 F.2d 1426, 1428 (9th Cir.1983)). "An affidavit from a government official is sufficient to
27 establish a prima facie showing that these requirements have been met." *Id.* If these factors are met,
28 a court should enforce the subpoena unless the responding party can prove that "the inquiry is

unreasonable because it is overbroad or unduly burdensome.” *Id.* citing *Children's Hosp.*, 719 F.2d at 1428.

FHFA filed a Motion to Enforce Subpoena (ECF No. 1) on March 31, 2017. The Subpoena seeks information and documents relating to every property that Saticoy Bay or any of Saticoy Bay’s affiliates held or claimed an interest in and that was the subject of an HOA foreclosure sale pursuant to Nevada Revised Statute § 116.3116 between September 18, 2009 and the present. *See Subpoena* (ECF No. 1-2), Exhibit 1. FHFA argues that this information is necessary for FHFA to resolve all issues concerning the continued validity of liens held by Fannie Mae and Freddie Mac (collectively referred to as the “Enterprises”) on properties in which Saticoy Bay or its affiliates claims an interest. *Cross-Motion* (ECF No. 18), pg. 3. Saticoy Bay objects to the Subpoena and requests that it be quashed. Saticoy Bay attacks the Subpoena on the following grounds: (1) the Subpoena requests information that is not relevant to the FHFA’s stated purpose, (2) the Subpoena requests information that is not sufficiently definite, (3) the Subpoena is oppressive and unduly burdensome, (4) the Subpoena requests information that is already in FHFA’s control and (5) the Subpoena requests information outside of the applicable statute of limitations. *Motion to Quash* (ECF No. 13), pgs. 7-15.

There is no question that FHFA’s Subpoena meets the three-part test set forth above. Rather, the overarching issue before the Court is whether FHFA’s Subpoena is unduly burdensome and overbroad. In order to demonstrate that an administrative subpoena imposes an undue burden, a subpoenaed party must provide evidence that shows that compliance “threatens to unduly disrupt or seriously hinder normal operations of a business.” *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977); *see U.S. Commodity Futures Trading Comm’n v. Ekasala*, 62 F.Supp.3d 88, 94 (D. C. Cir. 2014) (“The standard for showing that a request is unduly burdensome ... is a high one.”). Merely referencing the agency’s extensive requests or asserting that compliance would be costly is not enough. *See, e.g., Garner*, 126 F.3d at 1145–46; *NLRB v. Vista Del Sol Health Servs., Inc.*, 40 F.Supp.3d 1238, 1265–66 (C.D. Cal. 2014); *Ekasala*, 62 F.Supp.3d at 94. In addition, “[a]n administrative subpoena [] may not be so broad so as to be in the nature of a ‘fishing expedition.’ ” *Peters v. United States*, 853 F.2d 692, 700 (9th Cir.1988). A subpoenaed party must enunciate how

1 the subpoena constitutes a “fishing expedition.” *Garner*, 126 F.3d at 1146.

2 Here, Saticoy Bay argues that FHFA’s Subpoena presents an undue burden for several
3 reasons. First, Saticoy Bay represents that, with the exception of the deeds relating to the subject
4 properties, it “does not possess any of the public records associated with the properties that were
5 recorded in advance of the Association foreclosure sales.” *Id.* at pg. 12, Ins. 13-14. Saticoy Bay
6 asserts that it has no need to maintain these publicly recorded documents unless it is involved in
7 litigation. *Id.* If it were required to produce these documents, Saticoy Bay would be required to
8 research, order and pay for public records for hundreds of properties—something that FHFA is
9 capable of doing itself. In addition, Saticoy Bay argues that it “is a small real estate rental and
10 property management company and it would be required to hire counsel to complete the task.” *Reply*
11 (ECF No. 24), pg. 9, Ins. 26-27. Therefore, compliance with the Subpoena would be difficult and
12 time consuming. Ultimately, Saticoy Bay argues that it should not have to do FHFA’s work at its
13 own expense when FHFA is better equipped financially and has more manpower. FHFA on the other
14 hand asserts that it cannot rely exclusively on publicly available information “because such
15 information is incomplete and in some instances unreliable.” *Cross-Motion* (ECF No. 18), pg. 9, ln.
16 6. FHFA believes that this information should be readily accessible to Saticoy Bay. *Id.* at pg. 12.

17 Saticoy Bay also argues that FHFA’s Subpoena is overbroad and is being used as a “fishing
18 expedition.” *Motion to Quash* (ECF No. 19), pg. 9. Saticoy Bay believes that the Subpoena is the
19 result of the Enterprises’ failure to record their interests and the FHFA’s failure to keep reliable
20 records regarding their Nevada properties. *Id.* These failures, according to Saticoy Bay, do not
21 provide the FHFA a “license to engage in a fishing expedition at the expense of Respondent.” *Id.* at
22 Ins. 14-15. FHFA disputes this speculation in its entirety. FHFA argues that it knows which
23 mortgage loans it and the Enterprises own in Nevada but maintains that the Subpoena is the only
24 practical way for FHFA to obtain information on which of those loans are under threat of
25 extinguishment by Saticoy Bay as a result of an HOA foreclosure sale. *Cross-Motion* (ECF No. 18),
26 pg. 11.

27 Based on a review of the Subpoena, the parties’ briefs and oral argument, the Court finds that
28 the Subpoena should be enforced. However, enforcement should be limited. The Court finds that

1 Saticoy Bay should only be required to provide FHFA with the Assessor's Parcel Number, legal
2 description and street address of each property that it and its affiliates have held or claimed an interest
3 in and that was the subject of an HOA foreclosure completed under Nevada Revised Statute §
4 116.3116 between September 18, 2009 and the present. Some of this information has already been
5 provided. That information is sufficient to allow FHFA to then determine which Enterprise assets
6 might be affected by claims that their interests have been extinguished as a result of an HOA
7 foreclosure sale. Requiring Saticoy Bay to obtain and provide additional information from the
8 recorder's office and third-parties regarding properties that are not yet involved in litigation, which
9 may be equally accessible to FHFA would be unduly burdensome. If after FHFA receives this
10 information from Saticoy Bay and after conducting its own research, it finds that there remains
11 information that only Saticoy Bay could produce, FHFA may serve a followup subpoena requesting
12 such information. Accordingly,

13 **IT IS HEREBY RECOMMENDED** that the Petitioner Federal Housing Finance Agency's
14 ("FHFA") Cross-Motion for an Order Requiring Respondent to Comply with the Subpoena (ECF No.
15 18) be **granted**, in part, and that the Respondent's Motion to Quash (ECF No. 19) be **granted**, in
16 part, and **denied**, in part as follows:

- 17 1. Respondent shall provided Petitioner with the Assessor's Parcel Number (APN), legal
18 description and street address (including unit number, if any, and city, state, and zip
19 code) of each property that Respondent and Respondent's affiliates have held or
20 claimed an interest in and that was the subject of an HOA foreclosure completed under
21 Nevada Revised Statute § 116.3116 between September 18, 2009 and the present.
- 22 2. Respondent shall not be required at this time to provide the Petitioner with any other
23 information requested in the subpoena.

24 DATED this 10th day of August, 2017.

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27 GEORGE FOLEY, JR.
28 United States Magistrate Judge

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